

UNITED STATES DEPARTMENT OF AGRICULTURE

2003 NOV 24 P 3:00

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:

)
)
)
)
)

PACA Docket No. D-03-0017

Landrum Wholesale Produce, LLC

Respondent

Decision Without Hearing

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) hereinafter referred to as the "Act," instituted by a complaint filed on April 28, 2003, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period February 2002 through October 2002, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 40 sellers, 243 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$1,192,628.84.

The complaint also asserts that, on October 22, 2002, Respondent filed a Voluntary Petition in Bankruptcy pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) in the United States Bankruptcy Court for the Southern District of Mississippi (Case No. 02-06023JEE). Respondent admitted in its bankruptcy schedules that the 40 sellers listed in the complaint hold unsecured claims in amounts greater than or equal to the amounts alleged in the complaint. The complaint requests the issuance of a finding that Respondent committed willful, repeated and flagrant violations of section 2(4) of the PACA, and publication of the facts and circumstances of the violations.

Respondent has filed an answer in which Respondent admits that it has failed to make full payment promptly to the produce sellers listed in the complaint. Respondent denies that its failure to pay as required by the Act was willful. Despite this denial, however, Respondent's admissions warrant the immediate issuance of a Decision Without Hearing Based on Admissions.

The Judicial Officer's policy with respect to admissions in PACA disciplinary cases in which the respondent is alleged to have failed to make full payment promptly is set forth in In re: Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 549 (1998), as follows:

In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved full compliance or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case. In any "no-pay" case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked. (Emphasis added)

The complaint in this case was served on the Respondent on May 5, 2003 by certified U.S. mail, as evidenced by the posting date of the return receipt which was attached to the complaint. Respondent admits in its answer that it has failed to pay produce vendors the amounts alleged in the complaint. Under Scamcorp, Respondent was required to be in full compliance with the PACA by September 2, 2003, 120 days after service of the complaint. The affidavit of William Wesley Hammond of the PACA Branch, Agricultural Marketing Service, attached to Complainant's Motion for Decision Without Hearing Based on Admissions, indicated that on September 25, 2003 Mr. Hammond contacted five of the produce sellers listed in the complaint, and found that those five sellers were still owed \$524,884.40 for purchases of various

perishable agricultural commodities. This case, therefore, shall be treated as a “no-pay” case which, as the Judicial Officer stated in Scamcorp, warrants the revocation of Respondent’s PACA license. Since Respondent’s license has terminated due to its failure to pay the annual renewal fee (complaint, paragraph II(b)), the appropriate sanction here is the issuance of a finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publication of the facts and circumstances of the violations.

Respondent argues in its answer that its failure to pay promptly was not willful because the failure resulted from the fact that “Respondent was experiencing severe financial difficulties and was financially unable to comply with the statutory requirements.” Judicial Officer William G. Jensen addressed this issue in In re: Hogan Distributing, Inc., 55 Agric. Dec. 622 (1996), stating that the respondent’s failure to pay its produce obligations were willful, despite the respondent’s claim that financial difficulties forced the violations to occur. The Judicial Officer held that a “violation is willful if, irrespective of evil motive or erroneous advice, a person intentionally does an act prohibited by a statute or if a person carelessly disregards the requirements of a statute.” Id. at 626. The Judicial Officer again addressed the issue in Scamcorp, stating that the respondent in that case knew, or should have known, that it could not make prompt payment for amount of perishable agricultural commodities it ordered, and by continuing to order such goods, it intentionally violated the PACA and operated in careless disregard of the payment requirements of the PACA. Scamcorp, 57 Agric. Dec. at 553. The same analysis can be applied to the Respondent in the instant case.

As stated by the Judicial Officer in In re Hogan Distributing, Inc., 55 Agric. Dec. 622, 633 (1996):

[B]ecause of the peculiar nature of the perishable agricultural commodities industry, and the Congressional purpose that only financially responsible persons should be engaged in the perishable agricultural commodities industry, excuses for nonpayment in a particular case are not sufficient to prevent a license revocation where there have been repeated failures to pay a substantial amount of money over an extended period of time.

In view of Respondent's admission that it has failed to make full payment promptly to 40 sellers in the total amount of \$1,192,628.84 for 243 lots of perishable agricultural commodities, and the fact that Respondent has not paid the aggrieved sellers in full within 120 days of service of the complaint, Complainant's Motion for a Decision Without Hearing Based On Admissions is granted, and an order shall be issued finding that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that the facts and circumstances of the violations be published.

Findings of Fact

1. Landrum Wholesale Produce, LLC (hereinafter "Respondent") is a limited liability company organized and existing under the laws of the State of Mississippi. Its business mailing address is P.O. Box 4826, Jackson, Mississippi, 39296.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 021022 was issued to Respondent on April 5, 2002. This license terminated on April 5, 2003, when the firm failed to renew the license.
3. During the period February 2002 through October 2002, Respondent purchased, received and accepted, in interstate commerce, from 40 sellers, 243 lots of fruits and vegetables, all being perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$1,192,628.84.

4. On October 22, 2002, Respondent filed a voluntary petition pursuant to Chapter 11 of the United States Bankruptcy Code (11 U.S.C. § 1101 et seq.) in the United States Bankruptcy Court for the Southern District of Mississippi. In that matter, case number 02-06023JEE, Respondent admitted in its bankruptcy schedules that the 40 sellers listed in Attachment A of the complaint hold unsecured claims in an amount greater than or equal to the amounts alleged in the complaint.

5. Respondent failed to pay the produce debt described above, and failed to come into full compliance with the PACA within 120 days of service of the complaint against it.

Conclusions

Respondent's failures to make full payment promptly with respect to the transactions described in Finding of Fact No. 3, above, constitute willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b), and the facts and circumstances of the violations shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon parties.

Done at Washington, D.C.

this 24th day of November, 2003

Julia B. Holt
Administrative Law Judge